
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

TERRY DEWAYNE O'BRIEN,

Petitioner,

versus

DIRECTOR, TDCJ-CID,

Respondent.

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CIVIL ACTION NO. 1:05-CV-175

**MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Terry DeWayne O'Brien, a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 19, 2005, the petition was denied. Petitioner filed a notice of appeal. The United States Court of Appeals for the Fifth Circuit remanded the case for a determination as to when the petitioner's notice of appeal was deposited in the institution's internal mail system.

The Court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. After conducting an evidentiary hearing, the magistrate judge recommended that the Court find that the petitioner deposited his notice of appeal in the prison mail system on June 18, 2005.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available

evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

O R D E R

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. The Court finds that the petitioner deposited his notice of appeal in the prison mail system on June 18, 2005.

SIGNED at Beaumont, Texas, this 3rd day of May, 2006.

A handwritten signature in cursive script, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE